
By: **Delegate McIntosh**

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Assigned to: Rules and Executive Nominations

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House action: Adopted

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CHAPTER _____

1 AN ACT concerning

2 **Environment - Brownfields - Environmental Restoration and Development**

3 FOR the purpose of providing that certain owners of certain real property that is
4 contiguous to certain contaminated or potentially contaminated property are not
5 considered owners or operators of certain contaminated property under certain
6 circumstances; authorizing the Department of the Environment to impose a
7 lesser application fee on certain applications to the Voluntary Cleanup Program;
8 establishing a process for certain incomplete applications to the Program;
9 authorizing a certain determination by the Department to be transferred to a
10 subsequent purchaser under certain circumstances; requiring that a certain
11 determination that is conditioned on certain uses of the property or on
12 maintenance of certain conditions be recorded by the participant in the
13 appropriate land records; establishing the Environmental Restoration and
14 Development Task Force; specifying the membership and duties of the Task
15 Force; providing for the designation of the Task Force chairman; requiring the
16 Department of the Environment and the Department of Business and Economic
17 Development to provide certain staffing; prohibiting a Task Force member from
18 receiving certain compensation and authorizing the receipt of certain
19 reimbursement; requiring the Task Force to report to certain persons by a
20 certain date; altering a certain definition; providing for the termination of
21 certain provisions of this Act; and generally relating to environmental
22 restoration and development.

23 BY repealing and reenacting, without amendments,
24 Article - Environment
25 Section 7-201(a) and (x)(1)
26 Annotated Code of Maryland

1 (1996 Replacement Volume and 2002 Supplement)

2 BY adding to

3 Article - Environment

4 Section 7-201(x)(7) and 7-506(f) and (g)

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 2002 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Environment

9 Section 7-201(k) and 7-506(a)(2), (b), and (d)

10 Annotated Code of Maryland

11 (1996 Replacement Volume and 2002 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Environment**

15 7-201.

16 (a) In this subtitle the following words have the meanings indicated.

17 (k) "Federal act" means the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended through January 1, [1990]
19 2003.

20 (x) (1) "Responsible person" means any person who:

21 (i) Is the owner or operator of a vehicle or a site containing a
22 hazardous substance;

23 (ii) At the time of disposal of any hazardous substance, was the
24 owner or operator of any site at which the hazardous substance was disposed;

25 (iii) By contract, agreement, or otherwise, arranged for disposal or
26 treatment, or arranged with a transporter for transport for disposal or treatment, of a
27 hazardous substance owned or possessed by such person, by any other party or entity,
28 at any site owned or operated by another party or entity and containing such
29 hazardous substances; or

30 (iv) Accepts or accepted any hazardous substance for transport to a
31 disposal or treatment facility or any sites selected by the person.

32 (7) A PERSON WHO OWNS REAL PROPERTY IS NOT CONSIDERED AN
33 OWNER OR OPERATOR OF A VEHICLE OR SITE CONTAINING A HAZARDOUS
34 SUBSTANCE UNDER SUBPARAGRAPH (1)(I) OF THIS SUBSECTION SOLELY BY REASON

1 OF CONTAMINATION FROM A CONTIGUOUS OR OTHERWISE SIMILARLY SITUATED
2 REAL PROPERTY IF:

3 (I) THE PERSON DOES NOT OWN THE CONTIGUOUS OR OTHERWISE
4 SIMILARLY SITUATED REAL PROPERTY;

5 (II) THE PERSON'S REAL PROPERTY IS OR MAY BE CONTAMINATED
6 BY A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE FROM THE
7 CONTIGUOUS TO OR OTHERWISE SIMILARLY SITUATED REAL PROPERTY; AND

8 (III) THE PERSON MEETS THE REQUIREMENTS OF SECTION 107(Q)
9 OF THE FEDERAL ACT AND ANY REGULATIONS ADOPTED BY THE DEPARTMENT
10 IMPLEMENTING OR INTERPRETING THE REQUIREMENTS OF THAT SECTION.

11 7-506.

12 (a) To participate in the Program, an applicant shall:

13 (2) Pay to the Department an application fee of \$6,000, UNLESS THE
14 DEPARTMENT DETERMINES THAT A LESSER FEE WOULD BE SUFFICIENT TO COVER
15 THE COSTS DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

16 (b) (1) (i) The Department shall notify the applicant in writing, within 60
17 days after receipt of the application, whether:

18 1. The application, including the applicant's status as a
19 responsible person or an inculpable person, is approved;

20 2. The application is denied OR INCOMPLETE; or

21 3. The Department has no further requirements related to
22 the investigation of controlled hazardous substances at the eligible property as
23 provided in paragraph (3) of this subsection.

24 (ii) If the Department denies the application OR DETERMINES THAT
25 THE APPLICATION IS INCOMPLETE, the Department shall provide to the applicant the
26 reasons for its decision in writing.

27 (2) (i) An applicant may resubmit an application within 60 days after
28 receipt of notice of the Department's decision to deny the initial application OR
29 DETERMINATION THAT THE APPLICATION IS INCOMPLETE.

30 (ii) The Department shall approve or deny a resubmitted OR
31 REVISED application within 30 days after receipt.

32 (3) If the Department notifies the applicant that the Department has no
33 further requirements at the eligible property in accordance with paragraph (1)(i)3 of
34 this subsection, the Department shall include a statement that this notice does not:

35 (i) Subject to the provisions of § 7-505 of this subtitle, prevent the
36 Department from taking action against any person to prevent or abate an imminent

1 and substantial endangerment to the public health or the environment at the eligible
2 property;

3 (ii) Remain in effect if the notice of no further requirements is
4 obtained through fraud or a material misrepresentation;

5 (iii) Affect the authority of the Department to take any action
6 against a responsible person concerning previously undiscovered contamination at an
7 eligible property after a no further requirements notice has been issued by the
8 Department; or

9 (iv) Affect the authority of the Department to require additional
10 cleanup for future activities at the site that result in contamination by hazardous
11 substances.

12 (d) (1) If the direct costs of review of the application and administration and
13 oversight of the response action plan exceed [\$6,000] THE APPLICATION FEE, the
14 Department shall require an applicant or participant to pay to the Department the
15 additional costs incurred by the Department.

16 (2) If the direct costs of review of the application and administration and
17 oversight of the response action plan are less than [\$6,000] THE APPLICATION FEE,
18 the Department shall refund to the applicant or participant the difference between
19 the costs incurred and the application fee.

20 (F) A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER
21 REQUIREMENTS MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF THE
22 PROPERTY PROVIDED THAT THE SUBSEQUENT PURCHASER DID NOT CAUSE OR
23 CONTRIBUTE TO THE CONTAMINATION.

24 (G) (1) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
25 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR
26 ON THE MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL RECORD
27 THE DETERMINATION IN THE LAND RECORDS OF THE LOCAL JURISDICTION WITHIN
28 30 DAYS AFTER RECEIVING THE DETERMINATION.

29 (2) IF THE DETERMINATION BY THE DEPARTMENT THAT IT HAS NO
30 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR
31 ON THE MAINTENANCE OF CERTAIN CONDITIONS AND THE PARTICIPANT FAILS TO
32 RECORD THE DETERMINATION IN THE LAND RECORDS IN ACCORDANCE WITH
33 PARAGRAPH (1) OF THIS SUBSECTION, THE DETERMINATION SHALL BE VOID.

34 SECTION 2. AND BE IT FURTHER ENACTED, That:

35 (a) There is an Environmental Restoration and Development Task Force.

36 (b) The Task Force consists of the following members:

37 (1) three members of the Senate of Maryland, appointed by the President
38 of the Senate;

1 (2) three members of the House of Delegates, appointed by the Speaker
2 of the House;

3 (3) the Secretary of the Environment, or the Secretary's designee;

4 (4) the Secretary of Business and Economic Development, or the
5 Secretary's designee;

6 (5) the Secretary of Planning, or the Secretary's designee;

7 (6) one representative from the University System of Maryland with
8 expertise in the area of brownfields remediation or environmental science, appointed
9 by the Chancellor; and

10 (7) the following members, appointed by the Governor:

11 (i) one representative of the Cleanup Coalition;

12 (7) (ii) one representative of the Chesapeake Bay Foundation;

13 (8) (iii) two representatives of the business community with experience
14 in brownfields development; and

15 (9) (iv) one representative of the Baltimore Development Corporation;
16 and

17 (10) ~~one representative from the University System of Maryland with~~
18 ~~expertise in the area of brownfields remediation or environmental science, appointed~~
19 ~~by the Chancellor.~~

20 (c) The President of the Senate and the Speaker of the House shall jointly
21 designate the chairman of the Task Force.

22 (d) The Department of the Environment and the Department of Business and
23 Economic Development shall provide staff for the Task Force.

24 (e) A member of the Task Force:

25 (1) may not receive compensation; but

26 (2) is entitled to reimbursement for expenses under the Standard State
27 Travel Regulations, as provided in the State budget.

28 (f) The Task Force shall:

29 (1) review the recent amendments to the federal Comprehensive
30 Environmental Response, Compensation, and Liability Act as they relate to
31 brownfields, including:

32 (i) the definition of a "bona fide prospective purchaser";

1 (ii) the classification of a bona fide prospective purchaser as not an
2 owner or operator for purposes of "responsible person" status; and

3 (iii) the imposition of a windfall lien on a bona fide prospective
4 purchaser.

5 (2) examine the consequences of enacting State brownfields legislation
6 similar to the amendments discussed in paragraph (1) of this subsection;

7 (3) examine the consequences of including properties under active
8 enforcement as eligible properties under the State Voluntary Cleanup Program;

9 (4) examine the consequences of providing liability protections to
10 economic development corporations and counties that take ownership of
11 contaminated or potentially contaminated sites;

12 (5) examine methods by which a Program participant that received a no
13 further requirements determination conditioned on certain uses of the property could
14 apply for and receive a revised no further requirements determination based on
15 different uses of the property;

16 (6) examine the consequences of providing for focused site cleanups,
17 including limited liability protection for such cleanups, that are limited to specific
18 types of contamination or specific portions of the property;

19 (7) examine the consequences of authorizing economic development
20 corporations to act as a lender under the Maryland Clean Water Revolving Loan
21 Fund; ~~and~~

22 (8) examine potential sources of increased funding for State brownfields
23 programs; and

24 (9) study any other issues related to the State's brownfields programs
25 that the members of the Task Force consider appropriate.

26 (g) The Task Force shall report its findings and recommendations to the
27 Governor and, subject to § 2-1246 of the State Government Article, the General
28 Assembly on or before December 31, 2003.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 June 1, 2003. Section 2 of this Act shall remain effective for a period of eight months
31 and, at the end of January 31, 2004, with no further action required by the General
32 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

